



## Legal Practitioners

### Conduct Board

### FREQUENTLY ASKED QUESTIONS BY LAWYERS

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**Q. If a client lodges a complaint with the Legal Practitioners Conduct Board in relation to my account, can I institute legal proceedings to recover my costs?**

**A.** There is no legal bar to you instituting legal proceedings if your client had lodged a complaint with the Legal Practitioners Conduct Board in relation to their account. Before instituting legal proceedings you must ensure that you have satisfied your obligations under [Section 41](#) of the [Legal Practitioners Act 1981](#) by providing a bill to your client specifying the total amount of legal costs and describing the legal work done in relation to those costs.

If your client requests an itemised account, you are under an obligation, at any time within six months after the delivery of a bill of costs, to provide that itemised account stating the date, a description of the work done (eg number of pages of letters, amount of time spent at an attendance) and an amount for each item. The provision of an itemised account is to be provided at no cost to the client.

It may not, however, be conducive to a resolution of the complaint with the Legal Practitioners Conduct Board if legal proceedings are instituted while the complaint is being investigated by the Board. The Board's practice is to defer investigation of complaints where legal proceedings are instituted. You may wish to consider attending conciliation at the Legal Practitioners Conduct Board in an attempt to resolve the matter. Attendance at conciliation is voluntary. Refer to the Board's Fact Sheet on Conciliation.

**Q. If there is a dispute with a lawyer representing another party over costs, does the Legal Practitioners Conduct Board have jurisdiction?**

**A.** The Legal Practitioners Conduct Board has jurisdiction to deal with overcharging under [Section 77A](#) of the [Legal Practitioners Act 1981](#). The Board has interpreted this section to require it to investigate lawyer/client cost disputes, not disputes in relation to party/party costs.

**Q. If another lawyer makes a disparaging remark, verbally, or in correspondence about my professionalism, is that “misconduct” that can be investigated by the Legal Practitioners Conduct Board?**

**A.** The Board has power to investigate allegations of unprofessional and unsatisfactory conduct in relation to legal practitioners. “*Unprofessional conduct*” and “*unsatisfactory conduct*” are defined in section 5 of the [Legal Practitioners Act 1981](#).

“**Unprofessional conduct**”, in relation to a legal practitioner, means:

- a) an offence of a dishonest or infamous nature committed by the legal practitioner in respect of which punishment by imprisonment is prescribed or authorised by law;
- b) any conduct in the course of, or in connection with, practice by the legal practitioner that involves substantial or recurrent failure to meet the standard of conduct observed by competent legal practitioners of good repute.

“**Unsatisfactory conduct**”, in relation to a legal practitioner, means conduct in the course of, or in connection with, practice by the legal practitioner that is less serious than unprofessional conduct but involves a failure to meet the standard of conduct observed by competent legal practitioners of good repute.

Rule 21 of the [Rules of Professional Conduct and Practice](#) deals with communication between lawyers. The rule provides that lawyers, in communicating with other lawyers, “*must take all reasonable care to maintain the integrity and reputation of the legal profession by ensuring that the practitioner’s communications are courteous and that the practitioner avoids offensive or provocative language or conduct*”.

Whether a communication made by one lawyer about another lawyer amounts to misconduct is a question of degree, to be determined on the facts of each case.

It would be hoped that if a statement is made in the heat of a legal argument which results in offence to another lawyer, that lawyer could raise those concerns directly with the lawyer in question, in the hope that the matter is resolved without a formal complaint.

**Q. Can I claim, or charge, legal costs if I do not have a cost agreement in place with my client?**

**A.** You are not precluded from rendering an account to your client where there is no “*cost agreement*”. Under Rule 41 of the [Rules of Professional Conduct and Practice](#), however, you are required, as soon as practicable after taking first instructions from your client, to provide your client with written advice in relation to costs. This advice is to include the reasonably estimated range of costs and disbursements that your client may incur by pursuing the legal activity, and the basis on which those costs will be charged, ie Scale or time. Whilst you are not precluded from rendering an account and may recover your legal costs, such action may amount to a breach of the [Rules of Professional Conduct and Practice](#), and would need to be considered by the Board.

Failure to properly communicate with your client about costs may amount to unprofessional or unsatisfactory conduct. Refer to the Board’s Fact Sheet in relation to Costs.

**FAQ’s by Lawyers**  
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